

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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IN RE: BAIR HUGGER FORCED AIR      MDL No.: 15-md-02666 (JNE/FLN)  
WARMING PRODUCT LIABILITY  
LITIGATION

This Document Relates To:

VIRGINIA BEHNEY,

Plaintiff,

Civil Action No.: 17-CV-01476-JNE-FLN

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**PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION TO DISMISS**

NOW COMES Plaintiff, Virginia Behney, identified in Defendants' Motion to Dismiss for Failure to Comply with Pretrial Order No. 14 [Dkt. 1189], and by and through undersigned counsel submits this, her Response to Defendants' Motion to Dismiss, and would respectively show the Court the following:

1. In July of 2015, Ms. Virginia Behney contacted undersigned counsel regarding an infection and subsequent treatment that she experienced due to the use of a Bair Hugger patient warming device during an orthopedic surgery.
2. Counsel worked to obtain medical records and billing records to move forward with the case. Those records indicated that a Bair Hugger device was used during her original surgery.
3. On May 3, 2017, counsel filed the current action to comply with what was identified as the applicable statute of limitations deadline for the relevant claim.

4. Efforts to have Ms. Behney complete the Plaintiff Fact Sheet have been complicated by the inability to get in contact with her and her son, Jeff Behney. Counsel for Plaintiff believe that additional time could allow them to contact Plaintiff and complete the Plaintiff Fact Sheet.
5. While counsel has diligently continued their attempts to contact Ms. Behney and her son for several months in order to obtain the necessary information, those efforts have had limited success to date.
6. As a result, counsel has not been able to submit a completed Plaintiff Fact Sheet for this claim.

Accordingly, undersigned counsel request that the current action not be dismissed with prejudice and that Ms. Behney be given an additional sixty (60) days to contact counsel in order to provide the necessary information to cure any alleged deficiencies with the Plaintiff Fact Sheet and to continue the case.

Dated: April 12, 2018

KENNEDY HODGES, LLP

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